

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RICARDO NUNEZ</b>	)	
Claimant	)	
VS.	)	
	)	
<b>LAW COMPANY, INC.</b>	)	Docket No. 251,407
Respondent	)	
AND	)	
	)	
<b>ST. PAUL FIRE &amp; MARINE INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the preliminary hearing Order for Compensation dated April 4, 2000, entered by Administrative Law Judge Pamela J. Fuller.

**ISSUES**

Judge Fuller ordered the respondent and its insurance carrier to provide claimant preliminary benefits of temporary total disability compensation and medical treatment. The issue for review is whether claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Findings of Fact**

After reviewing the record compiled to date, the Appeals Board finds the Order for Compensation should be affirmed.

(1) The claimant, Ricardo Nunez, testified that he injured his low back on December 30, 1999, while pushing a tub of mud for Law Company, Inc. He immediately reported the incident to his boss, Mr. D. L. Skinner, and was sent to Dr. Myron Zeller that same day. At that initial visit, Dr. Zeller took claimant off work and claimant remains off work.

(2) Respondent questions claimant's credibility because on his job application he denied having previous back problems and workers compensation claims. These statements were not true. Also, claimant did not recall having been treated by Dr. Zeller before this injury whereas Dr. Zeller's records indicate that he had. Claimant also had a poor memory concerning other past medical treatments.

(3) At the time claimant went to work for respondent he was receiving Social Security Disability benefits and was still receiving those benefits at the time of this preliminary hearing.

(4) Claimant was not having back problems when he applied for the construction job with respondent. He did not experience any problems doing the heavy manual labor his job as a bricklayer's helper required during the approximately two weeks he worked for respondent before his accident.

(5) Claimant's present disability and need for medical treatment is directly related to the December 30, 1999, incident at work.

#### Conclusions of Law

(1) An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.<sup>2</sup>

(2) After observing claimant testify, Judge Fuller found his testimony credible and found that Mr. Nunez's work activities, at the very least, aggravated his back condition. After considering Mr. Nunez's testimony and the medical records in evidence, the Appeals Board agrees. Therefore, the Appeals Board affirms the finding that claimant sustained personal injury by accident arising out of and in the course of his employment.

(3) As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Appeals Board affirms the Order for Compensation dated April 4, 2000, entered by Administrative Law Judge Pamela J. Fuller.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2000.

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BOARD MEMBER

c: Bradley A. Pistotnik, Wichita, KS  
William L. Townsley, Wichita, KS  
Pamela J. Fuller, Administrative Law Judge

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<sup>1</sup> Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>3</sup> K.S.A. 1999 Supp. 44-534a(a)(2).

**RICARDO NUNEZ**

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**DOCKET NO. 251,407**

Philip S. Harness, Director